# Carlsberg Brewery Malaysia Bhd v Pendakwa Raya

HIGH COURT (SHAH ALAM) — CRIMINAL REVISION NO 43–3–93
MAHADEV SHANKAR J
12 MARCH 1993

***Criminal Procedure*** *— Prosecution — Charge under s 13(1) of the Food Act 1983 — Whether proceedings time-barred — Whether time starts to run from date of 'purchase' or 'procurement' — Food Act 1983 s 19(2)*

The applicant was charged under s 13(1) of the Food Act 1983 ('the Act') with the offence of selling a bottle of beer containing a foreign matter. Immediately after the applicant pleaded not guilty, his counsel took a preliminary objection that the proceedings were time-barred under s 19(2). The grounds were that the sale took place on 20 May 1992 and the charge was only filed in the magistrate's court on 19 August 1992, ie on the 92nd day after the sale. The magistrate held that time accrued from the date of 'procurement' being the date on which the food was delivered to the authorized officer of the Ministry of Health, Kuala Lumpur. The preliminary objection was therefore dismissed. The applicant filed a petition for revision.

**Held**, acquitting and discharging the applicant:

(1) Section 19(2) of the Act envisages two separate events upon the occurence of which time begins to run. The first event is the time when the food was purchased by the consumer. This would be simultaneous with the time it was sold. The second event is from the time the food was procured from any person for analysis or examination. This event is meant to cover a situation where an authorized officer under the Act exercises his power under s 5 to demand from any vendor or manufacturer or his agent a sample for the purpose of analysis.

(2) Time was not meant to run from a completely flexible period being the date when the purchaser hands the article to an authorized officer. Such a construction would make the limitation period meaningless.

**[Bahasa Malaysia summary**

Pemohon telah didakwa di bawah s 13(1) Akta Makanan 1983 ('Akta itu') kerana kesalahan menjual sebotol bir yang mengandungi bahan asing. Sebaik sahaja pemohon mengaku tidak bersalah, peguambela beliau telah membuat suatu bantahan permulaan bahawa prosiding itu dihalang had tempoh masa di bawah s 19(2). Alasannya adalah bahawa penjualan itu berlaku pada 20 Mei 1992 dan tuduhan itu hanya difailkan di dalam mahkamah majistret pada 19 Ogos 1992, iaitu pada hari ke 92 selepas penjualan itu. Majistret memutuskan bahawa masa berakru dari tarikh 'procurement' iaitu tarikh minuman itu dihantar kepada pegawai dari Kementerian Kesihatan, Kuala

Lumpur yang telah diberi kuasa. Oleh itu, bantahan permulaan itu telah ditolak. Pemohon telah memfailkan petisyen untuk ulangbicara.

**Diputuskan**, membebaskan dan melepaskan pemohon:

(1) Seksyen 19(2) Akta itu membayangkan dua peristiwa yang berasingan yang apabila berlaku, masa akan mula berjalan. Peristiwa pertama adalah masa apabila makanan itu dibeli oleh konsumer. Ini adalah serentak dengan masa ia dijual. Peristiwa kedua adalah dari masa makanan itu diperolehi dari sesiapa untuk analisis atau pemeriksaan. Peristiwa ini bermaksud untuk melingkungi suatu situasi di mana seseorang pegawai yang diberi kuasa di bawah Akta itu menggunakan kuasanya di bawah s 5 untuk mendesak dari seseorang penjual atau pengilang atau agennya satu sampel untuk tujuan analisis.

(2) Masa tidak dimaksudkan untuk bermula dari suatu tempoh yang fleksibel iaitu tarikh pembeli memberi artikel itu kepada seorang pegawai yang diberi kuasa. Pentafsiran sedemikian akan membuat had tempoh masa tidak bermakna.]

**Legislation referred to**
Food Act 1983 s 19(2)

*David Morais* (*Sri Ram & Co*) for the applicant.
*Nor Afizah bte Anum* (Deputy Public Prosecutor) for the public prosecutor.

*Cur Adv Vult*

**Mahadev Shankar J**: The accused was presented with an amended charge in the magistrate's court at Banting on 23 October 1992 for an offence under s 13(1) of the Food Act 1983 ('the Act'). The amended charge read as follows:

> Kamu sebagai pengilang pada 20 Mei 1992 lebih kurang pukul 7.50 petang di Kelab Sultan Abdul Samad Telok Datok di Daerah Kuala Langat dalam Negeri Selangor telah menjual satu botol besar Carlsberg Beer kandungannya 660ml dan apabila dianalisa di jabatan kimia Petaling Jaya didapati mengandungi satu bungkusan kosong berjenis polypropylene (plastik) seberat 4.1g sebagai bahan asing. Oleh yang demikian kamu telah melakukan satu kesalahan di bawah s 13(1)(b) dibaca bersama s 28 Akta Makanan 1983 dan sekiranya disabitkan kesalahan, boleh dihukum di bawah s 13(1) Akta yang sama.

The amended charge translates in the English language as follows:

> That you as a manufacturer on 20 May 1992 at approximately 7.50pm at the Kelab Sultan Abdul Samad Telok Datok in the district of Kuala Langat, Selangor sold one large bottle of Carlsberg beer containing 660ml which upon analysis by the chemist department, Petaling Jaya, was found to contain one empty polypropylene (plastic) packet weighing 4.1g being a foreign matter. Accordingly, you have committed an offence under s 13(1)(b) read together with s 28 of the Food Act 1983 and if convicted, will be liable to punishment under s 13(1) of the said Act.

Immediately after the accused pleaded not guilty to the amended charge, its counsel took a preliminary objection that the proceedings were time-barred by virtue of s 19(2) of the Act on the following grounds:

(a) section 19(2) provided that 'no proceedings in respect of the sale of any food or of any offence against the Act shall be instituted after the expiration of 90 days from the time of purchasing or procuring that food';
(b) that per the summons, the offending bottle of beer was sold on 20 May 1992 and the charge was entered on the summons by the magistrate's court on 21 August 1992 which was 93 days after the sale of the bottle of beer; and
(c) in view of the mandatory nature of s 19 and in view of the offence being a strict liability offence, it was submitted that the magistrate had no jurisdiction to enlarge time and that it was incumbent on him to dismiss the amended charge and acquit the accused.

The prosecuting officer submitted that the charge was filed in the magistrate's court on 19 August 1992.

Defence submitted that notwithstanding that the charge may have been filed on 19 August 1992, even using that date as being the cut-off date, the charge was still filed on the 92nd day of the date of the sale and was therefore time-barred by s 19 of the Act.

After a short deliberation, the learned magistrate overruled the preliminary objection and held that the proceedings were brought within time and fixed the matter for trial. He gave the following oral reasons:

(a) that s 19(2) speaks of 90 days from the time of 'purchasing or procuring' the offending food;
(b) a distinction was drawn between purchasing and procuring and it was held that time accrued from the date of 'procurement' being the date on which the offending food was delivered by the Ministry of Health, Kuala Langat district;
(c) the learned magistrate then held after a perusal of documents in his file which were not tendered in evidence and which were not available to the accused that the health inspector only received the offending bottle of beer after 4pm on 21 May 1992 and that as it was the evening the proper date from which time began to run was the 22 May 1992; and
(d) the learned magistrate accordingly held that the proceedings were not time-barred but were instituted within the statutory 90 day period.

This decision has come up before me in the exercise of my revisionary jurisdiction. I heard further submissions from the defence counsel.

Section 19(2) of the Act envisages two separate events, upon the occurrence of which time begins to run. The first event is the time when the food was purchased by the consumer. This time would be simultaneous with the time it was sold. In the present case, that time was 7.50pm on 20 May 1992. By s 54 of the Interpretation Act 1948 and 1967, time would begin to run from 21 May 1992. The 90th day thereafter was 18 August 1992. On 19 August therefore, 90 days had expired from the time of purchase. Since the words of s 19(2) of the Act are mandatory, no prosecution could be instituted after 18 August 1992 for the offence charged, which was the sale of the allegedly offending article.

The second event envisaged by s 19(2) is the 'procuring from any person for analysis or examination'. With respect, this event is meant to cover a

situation where an authorized officer under the Act exercises his power under s 5 of the Act, to demand from any vendor or manufacturer or his agent a sample for the purpose of analysis. If that is the route by which it is discovered subsequently that the article offends against s 13 of the Act, prosecution must be instituted within 90 days of the procurement.

With respect to the learned magistrate, the section was not meant to provide for time to begin to run, not from the date when somebody purchased an article, but some completely flexible period thereafter being the date when the purchaser hands the article he has brought to an authorized officer for analysis. Such a construction would make the limitation period meaningless.

I therefore set aside the order of the magistrate and acquitted and discharged the accused.

*Accused acquitted.*

Reported by Jeanne Tan